



COMMONWEALTH of VIRGINIA

Department of Mines, Minerals and Energy

Division of Mines

P.O. Drawer 900

Big Stone Gap, VA 24219-0900

(276) 523-8100

Frank A. Linkous, Chief

MEMORANDUM DM 07-01

TO: All Virginia Underground Coal Mine Operators

FROM: **Frank A. Linkous**
Frank A. Linkous, Chief Division of Mines

SUBJECT: State-Designated Mine Rescue

DATE: January 30, 2007

Sections 45.1-161.73 through 45.1-161.76 of the Coal Mine Safety Laws of Virginia provide for state-designated mine rescue teams. The Federal Mine Safety and Health Administration under Title 30, Part 49 of the Code of Federal Regulations also recognize these teams. Three companies employing mine rescue teams have agreed to serve as state designated mine rescue teams. The companies are:

Dickenson-Russell Coal Company, LLC
Lone Mountain Processing, Inc.
Paramont Coal Company Virginia, LLC

Each company provides a properly maintained mine rescue station and readily available mine rescue teams. Should a change occur in the state designated mine rescue teams, we will inform you at a later date.

Since the MINER Act of 2006 requires sweeping changes to mine rescue regulations to be implemented by December 15, 2007, the three teams listed above have only agreed to remain in the State-Designated Mine Rescue Program until December 15, 2007, or an earlier implementation date. The attached agreement reflects these changes in the ending date and modifications to the installment plan.

Each mine operator wishing to have the state-designated mine rescue teams assigned to a mine must complete the following procedure:

- 1.) Complete the State Designated Mine Rescue Agreement. A copy of the agreement has been enclosed for participating mines. Other interested parties can obtain a copy of the agreement/contract from the DMME web site at www.dmme.virginia.gov, listed under "MINES", "Mine Rescue"; or by contacting the Division of Mines at (276) 523-8229. A separate agreement must be completed and returned for each mine to be served by the state-designated mine rescue teams.

- 2.) Submit the annual rescue fee under Section 3, Compensation of the original agreement. A fee of \$2,000.00 is required for each mine and must be in the form of a money order, company check, cashier's check, or certified check made payable to the Treasurer of Virginia and submitted to the Department of Mines, Minerals and Energy's Division of Mines.

The company may elect to pay the annual fee in installments with \$600 due February 15th, May 15th, August 15th, and \$200 due November 15th. **If you decide to pay in installments, payments are due on or before the dates listed above. If DMME has not received payment by the end of the month that the payment is due, mine rescue coverage will be terminated.**

- 3.) Pursuant to Virginia Code 45.1-161.76A you must submit a certificate of insurance providing evidence of Workers' Compensation coverage whereby the members of the team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred. The following must be provided on the certificate:
- The certificate must name the Department of Mines, Minerals and Energy (DMME), Division of Mines (DM) as the holder and bear an endorsement requiring that the insurer notify the DMME, DM in writing no less than 10 days before substantive changes are made in the policy including any termination, cancellation, or failure to renew.
 - The "WC Statutory Limits" box on the certificate must be marked.
 - An authorized representative of the insurance company must sign the certificate.
 - The party named as "Insured" must be a coal company operating a licensed mine in Virginia under this agreement.
 - Coal companies located in any state other than Virginia must ensure "Virginia Coverage" is included on the Certificate of Insurance.

Failure to maintain continual coverage shall result in the cancellation of the agreement between the Division and the Company.

NOTE:

Mines currently enrolled in the state-designated mine rescue program: Your coverage by state-designated mine rescue teams expires February 15, 2007. You must submit a new agreement prior to February 15, 2007, to continue state-designated mine rescue team coverage.

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Enclosure

AGREEMENT

This Agreement made this ____ day of _____ 2007, by and between the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mines (hereinafter referred to as the Division) and

Company Name (Herein referred to as "Company")	/	Covered Mine Operation Mine No./Name Mine Index No.
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In consideration of the mutual covenants and stipulations set out herein, the Division and the Company agree as follows:

1. DEFINITION: For purposes of this Agreement, the following definition of "Mine Rescue Services" and/or "Mine Rescue Work" will apply:

Subject to the provisions of Virginia Code §§ 45.1-161.67 through 45.1-161.76, Mine Rescue Services and/or Mine Rescue Work shall mean services or work to search for, rescue, or transport a person or persons endangered, trapped, injured, or killed in a mine disaster or emergency situation and which must be performed by a mine rescue team equipped with individual breathing apparatus. Mine rescue work shall also include any rehabilitation work in the mine which is necessary to search for, rescue or transport any person or persons in the mine. For purposes of this Agreement, activities such as penetrating and exploring old works, breaching sealed areas, and similar efforts requiring the use of personnel with self-contained breathing apparatus are not considered Mine Rescue Work.

2. SCOPE OF SERVICE: Pursuant to Virginia Code § 45.1-161.73, conditioned upon the payment by the Company to the Division of a fee in the amount provided in Paragraph 3 below, for the mine owned or operated by the Company which is the subject of the terms of this Agreement (herein "Covered Mine Operation"), the Division shall make available two (2) or more state designated mine rescue teams (herein "Teams") to perform mine rescue work at the Covered Mine Operation.
3. COMPENSATION: Annual mine rescue fee for the Covered Mine Operation in the amount of \$2,000 is due and payable to the Division at time of execution of this

Agreement (herein "Mine Rescue Fee"). However, the Company may elect in writing to pay the Mine Rescue Fee in installments with \$600.00 due on February 15th, May 15th, August 15th, and \$200 due on November 15th. Indicate the choice of fee payment below:

☐ The Company elects to pay the Mine Rescue Fee in full.

☐ The Company elects to pay the Mine Rescue Fee in four equal installments.

In the event the term of this Agreement is less than a full year, then the Mine Rescue Fee shall be prorated with the fee calculated at the rate of \$200.00 per month. The fees are non-refundable.

This Agreement is non-transferable. However, in the event the Mine Rescue Fee is paid in advance, and thereafter the name of the Covered Mine Operation(s) is changed or all the equipment and personnel at a Covered Mine Operation are moved to another location due to depletion of reserves or due to adverse conditions, then upon written request to and approval by the Chief, the unused portion of the Mine Rescue Fee paid hereunder may be applied to Mine Rescue Fees, which become due for the new operation.

4. DURATION OF COVERAGE: The services to be provided pursuant to this Agreement shall commence on February 16, 2007, or the date this Agreement is fully executed, and said services shall terminate on either (i) the last day before the effective date of any final regulations issued by the U.S. Secretary of Labor with regard to mine rescue teams, pursuant to Section 4 of the Mine Improvement and New Emergency Response Act of 2006, (ii) December 14, 2007, or (iii) the date of termination established pursuant to Paragraph 7 below, whichever first occurs.
5. LIABILITY: Pursuant to Virginia Code § 45.1-161.76.A, for the purpose of Worker's Compensation coverage during any mine disaster to which the Team responds, the members of the Team shall be deemed to be within the employment of the operator of the Covered Mine Operation at which the disaster occurred. Each operator to whose mine the Team is assigned shall provide insurance coverage for Worker's Compensation liability and shall submit a certificate of such insurance to

the Division. The certificate shall name the Department of Mines, Minerals, and Energy, Division of Mines as the holder of such certificate. The certificate shall bear an endorsement requiring that the insurer give the Department of Mines, Minerals, and Energy, Division of Mines, at least ten (10) days written notice, via Certified Mail or fax notification (276-23-8242), whenever substantive changes are made in the policy including any termination, cancellation, or failure to renew. The Division or the Team may require an additional certificate at any time if it has reason to believe that proper coverage has ceased, been cancelled, or does not exist. Failure to have such insurance or to submit such certification to the Division or to the Team shall result in the cancellation of any agreement between the Division and the Covered Mine Operation. The Team may refuse to respond to a mine disaster at any mine for which it has not received a certificate of such insurance coverage or for which such coverage has been cancelled. Notice of cancellation of the coverage shall be sent to the Division, and the Division shall thereafter immediately notify the Teams assigned to provide Mine Rescue Services for the Covered Mine Operation.

Pursuant to Virginia Code § 45.1-161.76.B, the members of the Team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission is the result of gross negligence or willful misconduct. Pursuant to Virginia Code § 45.1-161.76.C, no operator providing personnel for the Team to engage in rescue work at a mine not owned or operated by the operator shall be deemed liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

- 6. DUTIES OF TEAMS AND COMPANY:** When requested by the Division or by the operator of the Covered Mine Operation to which the Team has been assigned to perform rescue work, the Team shall respond to perform rescue work unless the Team is already responding to a prior request, is engaged in rescue work at another mine, or is competing in a mine rescue contest.

The Team shall not be required to perform any rescue work if the person or persons in charge of the Team, after arrival at the mine, in his or their sole discretion determines that the

Team's performance of the requested work would likely result in injury or death to any Team member.

The Team shall be responsible for equipping each member of the Team and each of its mine rescue stations. The Team shall be responsible for maintaining its equipment in a safe, operable and permissible condition. The Team shall be responsible for training its members in proper mine rescue procedures. The Team shall at all times meet the regulatory requirements of the Federal Mine Safety and Health Administration contained in 30 CFR Part 49, or any successor provision. The Team shall provide all the equipment and materials set out in 30 CFR Section 49.6, as well as any other equipment that is used by mine rescue teams, including equipment not normally used in the day-to-day operation of a mine. All other equipment and materials necessary to do the Mine Rescue Work shall be supplied by the covered mine operation and shall be available at the mine.

7. CANCELLATION AND TERMINATION: The Company may terminate this Agreement at any time upon written notice to the Division. This written notice must be mailed certified or hand-delivered to the DMME office in Big Stone Gap, VA, or faxed to DMME at (276) 523-8242. The Mine Rescue Program service fee of \$200 per month will be due for the month in which the notice is received. The Division may cancel or terminate this Agreement upon written notice to the Company upon the happening of one or more of the following events:
- a. During the duration of this Agreement, the Company fails to pay the annual fee, or any applicable installment thereof, by the end of the month in which it is due;
 - b. The Company fails or refuses to maintain Worker's Compensation Insurance which covers the Teams assigned to its Covered Mine Operation;
 - c. The Company fails to submit to the Division a certificate of coverage for its Worker's Compensation Insurance within seven (7) days of being requested by the Division to do so; or
 - d. If at any time during the term of this Agreement, the number of Teams

participating is insufficient to make available to the Company at least two (2) Teams.

8. ENTIRE AGREEMENT: The entire Agreement between the parties is contained herein and in Virginia Code §§ 45.1-161.73 through 45.1-161.76, which is incorporated herein by reference. No amendment or modification of this Agreement shall be effective unless it is reduced to writing and signed by both parties. This Agreement is expressly subject to any changes in State or Federal laws, rules or regulations that affect the services to be rendered pursuant hereto. This Agreement has been executed pursuant to the laws and regulations of the Commonwealth of Virginia. Any disputes arising out of this Agreement will be decided under the laws of Virginia. This Agreement is being executed in duplicate effective as of the day and year first above written.

Company: _____
By: _____
Title: _____ President

Commonwealth of Virginia
Department of Mines, Minerals and Energy
Division of Mines

By: _____
Frank A. Linkous, Chief
Division of Mines